

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5503 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KC PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR YN OZA for Petitioner

MR PK JANI for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

SERVED BY DS for Respondent No. 3

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE M.S.SHAH

Date of decision: 20/01/98

ORAL JUDGEMENT (Per K.Sreedharan CJ ):

The petitioner has approached this Court praying for issuance of a writ of mandamus or any other writ, order or direction quashing and setting aside the order dated July 16, 1997 (Annex.A) passed by the Collector, Mehsana District, Mehsana, assigning 302.40 sq.mts of land of Survey No.2249 of Patan City. He moved this

application as a pro bono publico, as a public interest litigation.

2. 302.40 sq.mts. of land belonging to City Survey No. 2249 of Revenue Survey No.1030 paiki of village Patan, District Mehsana, is assigned to 3rd respondent as per order at Annexure A passed by the Collector. According to the petitioner, the land is situated in prime situation of Patan City. There was some dispute in relation to this property between the Hazrat Pir Rahematullah and Kabrrastan Trust (hereinafter referred to as the Trust ) on the one hand and the State Government on the other. The matter came to this Court in First Appeal No.184 of 1978 and in Civil Application No.1134 of 1980 in F.A.No. 184 of 1978, this Court passed an order directing maintenance of status quo. That case was decided by this Court on 10-8-1993 against the Trust. Thereafter 3rd respondent put in an application for assignment of the land. P.K.Kotawala Industrial-cum-Technical High School, State Transport Corporation and Patan Municipality also applied for the assignment of the said land. The Collector by order dated 16-7-1997 (Annexure A) granted the assignment in favour of third respondent for a consideration of Rs.6,50,160/-. It appears that the said amount was deposited by the third respondent on June 6, 1977. Since the claim of the petitioner-Patan Municipality - was rejected, the then President of the Patan Municipality has come up with this petition questioning the assignment in favour of respondent no.3.

3. In the rejoinder affidavit filed by the petitioner, it is specifically averred that City survey No.2249 was vested in Patan Municipality and so the property should not have been transferred by the Collector in favour of the 3rd respondent.

4. The main bone of contentions raised by the Counsel appearing in the case is whether the property comprised in S.No.2249 was Government land or vested in Patan Municipality. As per the provisions contained in Section 82 of the Gujarat Municipalities Act, lands which became vested in Patan Municipality were notified on 30-4-1984. In that Notification there were two Schedules. Schedule I shows the properties which became vested in Patan Municipality and Schedule II shows the lands which were kept reserved by the Government for its own or any other purposes. In Schedule I Survey No.2249 was included at Sr.No.57 as land vested in Patan Municipality. That survey number was shown to have an area of 1077.87 sq.mts. Learned Asstt.Government Pleader

made available to us a photo copy of the Notification from the file maintained by the Officers who represents the department. As per that Officer, it is not Survey No.2249 but it is Survey No. 2248. On that basis an argument was advanced by the learned AGP that in Schedule I to the Notification dated 30-4-1984 the survey number involved in this case was not shown as property of Patan Municipality. We are not in a position to agree with this argument. Survey number at Sr.No. 57 in Schedule I can very well be read as Survey Number 2249. However, we are not impressed by the arguments advanced by the learned Asstt.Government Pleader. Had Survey number 2249 was reserved with the Government for its own use, Schedule II should have made mention of that survey number. Schedule II does not contain Survey Number 2249. So from the Notification dated 30-4-1984, it is evident that Survey Number 2249 having an extent of 1077.87 sq.mts. was notified as land vested in Patan Municipality.

5. Learned Counsel representing 3rd respondent advanced an argument that Survey No. 2249 was Government land on the basis of the property card and on account of the finding arrived at by this Court in Civil Application No.1134 of 1980 in F.A.No.184/78. This argument, we are afraid, cannot hold good. The property involved in S.No.2249 was subject matter of Civil Application No.1134/80 in FA No.184/78 on the file of this Court. This Court directed the parties thereto to maintain status quo in respect of that land. Therefore, the State Government could not make any record in relation to that property. Therefore, absence of property card cannot be taken to be of any consequence as regards the title of the municipality to the property is concerned. Further, the decision rendered by this Court in Civil Application 1134/80 cannot go to adversely affect the right, title and interest of Patan Municipality over the property comprised in Survey No.2249 for the simple reason that the municipality was not a party to the aforesaid proceedings. So the issue regarding the title of the property ought to have been considered by the Collector de hors the property card in view of the Notification dated April 30, 1984.

6. According to the learned Counsel representing third respondent, had the municipality got title to the said property they would not have applied to the Collector for the assignment of the said land. The fact that the municipality applied for the assignment of the said land is, it is argued, proof positive of the fact that municipality has no title to the property. This

argument, though quite attractive, cannot non-suit the Municipality. By virtue of the order of this Court in First Appeal No.184 of 1978 and the order in Civil Application No.1134/80 this Court directed maintenance of status quo. Consequently the property card might not have been prepared. This situation prompted to apply for assignment because municipality wanted the land for itself. The application for the said property filed by the Municipality cannot be taken as an admission on the part of the Municipality that the property belongs to the Government. Even if taken as an admission, it will not go to defeat the title of the Municipality.

7. The applications put in by Kotawala Industrial Cum Technical High School, Patan and the State Transport Corporation were rejected by the Collector in 1996 on the ground of pendency of the First Appeal before this Court. That was factually incorrect. First Appeal was disposed of by this Court by judgment dated August 10, 1993. Therefore, the Collector had not applied his mind to the actual factual situation when he rejected those applications.

8. Learned Counsel representing the third respondent advanced an argument that this petition put in by K.C.Patel who was previous President of the municipality should not be entertained as a public interest litigation. According to the learned Counsel, before the Collector there was rival contest between the municipality on the one hand and the third respondent on the other. When the land has been assigned in favour of the third respondent the defeated rival contender is not to move this Court by a public interest litigation and so this petition is to be rejected. It is true that the municipality raised a claim for the land before the Collector. K.C.Patel, who is petitioner before us, is not championing his personal interest over the property. He was trying to get the land for the Municipality - the local body. When it is seen that the Collector passed the order without knowing the true factual aspects regarding the title to the property, this Court has to interfere in exercise of its power under Art.226 of the Constitution to safeguard the interest of the Municipality in larger interest of the public.

9. Reference was made to the decision of the Apex Court in Shri Sachidanand Pandey and another Vs. The State of West Bengal and others, AIR 1987 SC 1109 to advance an argument that when all the materials are considered by the Government, this Court is not to interfere unless and until malafides is established. In

this case the Government did not consider any of the issues raised by parties. Collector on a wrong understanding of facts passed orders assigning land to third respondent. So we hold that the order passed by the Collector cannot stand and order that the whole matter must be considered by the Government afresh in the light of the observations made hereinabove in this judgment. While considering the claims put forth by the third respondent the contentions raised by Municipality should be considered in all its aspects, in compliance with the principles of natural justice.

10. In view of what is stated above, we allow this petition, quash and set aside the order at Annexure A and remit the entire issue to the Government for consideration of the issue relating to assignment of land comprised in S.No.2249 of Patan City in accordance with law.

11. This petition accordingly stands disposed of in the aforesaid terms. There shall be no order as to costs.

(K.Sreedharan CJ)

( M.S.Shah J. )

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